



December 22, 1999

Mr. K. Scott Oliver
Assistant Criminal District Attorney
Civil Section
County of Bexar
300 Dolorosa, Suite 4049
San Antonio, Texas 78205

OR99-3741

Dear Mr. Oliver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130480.

The Bexar County District Attorney's Office received a request for "your entire file" in a specified criminal matter, "in particular, any and all witness statements." You indicate that you have released front page offense report information. *See* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). You also indicate that you have released to the requestor documents filed with the court. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992). You claim that the remaining information is excepted from disclosure under section 552.108 of the Government Code.

Section 552.108 provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108.

You assert that because the requestor seeks the entire criminal case file, the records at issue are protected in their entirety under *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994). In *Curry v. Walker*, 873 S.W.2d 379, 381 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's "entire file" was "too broad" and that, citing *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993), "the decision as to what to include in [the file] necessarily reveals an attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380. To the extent that the requestor in this instance seeks all the information in a particular criminal file, we agree that,

except as noted below, you may withhold the responsive information pursuant to section 552.108 of the Government Code as attorney work product.¹

We note that the requestor not only seeks the entire criminal file, but also, specifically, witness statements. Specifically requested records in an attorney's litigation file are not afforded blanket protection as attorney work product under the rule in *Curry*. Therefore, we must separately address whether the specifically requested witness statements may be withheld under section 552.108.

Again, we do not believe that your arguments under *Curry* establish that the specifically requested witness statements are prepared by an attorney representing the state or reflect his mental impressions or legal reasoning such as to fall within the scope of section 552.108(a)(3). Nor does it appear that the records are internal records subject to section 552.108(b).

However, if the case to which the requested records relate is pending, such that release of the witness statements would interfere with law enforcement, you may withhold the statements under section 552.108(a)(1). On the other hand, if the statements relate to a case which has been concluded without a conviction or deferred adjudication such as to be protected by section 552.108(a)(2), you may withhold them under that provision. Otherwise, you must release the requested witness statements.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

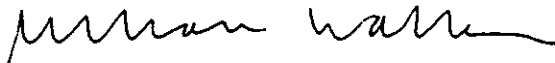
¹ Although we accept your claim that information responsive to the request for the entire litigation file is protected *in toto* under the *Curry* case in conjunction with section 552.108, please note that this office believes it the better practice to claim protection under *Curry* rationale in conjunction with the work product aspect of section 552.103 for anticipated or pending litigation, and in conjunction with the work product aspect of section 552.111 for litigation which has concluded.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 130480

Encl. Submitted documents

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